IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.251 OF 2007

Smita Narendra Choudhari. ... Petitioner.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Miss. Shraddha Y. Mohite for the Petitioner.

Mr. S.R. Borulkar, P.P. for the State.

CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 1st March, 2007.

P.C.

. The petitioner is seeking transfer of investigation to the C.I.D., Maharashtra State. In short, it is the case of the petitioner that accused Govind A. Wagle had promised to marry her. After promising that he would marry her, he had sexual relations with her. She conceived a child. She delivered a male child. D.N.A. tests reveal that accused Govind Wagle is the father of the child. According to the petitioner, a serious offence like rape has not been investigated properly by the police. The learned Counsel contended that on 5.5.2005 the petitioner filed the complaint

and on 6.5.2005, the learned Sessions Judge ordered that in the event of arrest the accused shall be released on bail on his furnishing P.R. of Rs.5,000/- with one solvent surety in the like amount. The learned Counsel contended that the accused withdrew the bail application on 13.5.2005. Obviously, order dated 6.5.2005 had lapsed on account of withdrawal of the anticipatory bail application. However, The police did not arrest the accused. She pointed out that on the contrary, the police made a false statement that the accused was arrested on 11.5.2005 and was released on bail on 11.5.2005 pursuant to the anticipatory bail order dated 11.5.2005. The learned Counsel contended that therefore, it is evident that the police have protected the accused. They have not carried out proper investigation. They have not recorded the statements of the persons who could depose about the places which the accused had visited along with the petitioner. She therefore submitted that the investigation should be transferred.

2. We have also heard Mr. S.R. Borulkar, learned P.P. He drew our attention to the affidavit of Mrs. Sangeeta Patil, Police Inspector who was at the relevant time attached to the Oshiwara Police Station. It appears that she was the Investigating

Officer of the case. Mr.Borulkar submitted that charge-sheet was filed on 15.9.2006. The charge-sheet is filed for offences under Section 376 r/w. Section 420 of the Indian Penal Code. The learned P.P. contended that if the petitioner has any grievance she can now agitate it before the trial Court. It is submitted that if the petitioner wants statements of any important witnesses to be recorded, if the petitioner gives necessary particulars to the police the police shall record the statements of those witnesses and file additional charge-sheet under Section 173(8) of the Code of Criminal Procedure after taking permission from the Court.

3. In the peculiar facts and circumstances of the case since the charge-sheet is already filed and also considering the statement made by the learned P.P., we feel that the appropriate course for the police will be to record further statements of persons whose names will be given by the petitioner and file additional charge-sheet after taking permission under Section 173(8) of the Code of Criminal Procedure. The petitioner may, if she so desires, give names of the persons whose statements need to be recorded. The police shall record those statements and with the permission of the learned Judge file additional

charge-sheet. So far as grievance made by the petitioner against the Police Officers is concerned, we express no opinion at this stage because the trial is yet to take place. However, we keep all the contentions of the petitioner open. For the alleged misconduct of the police, the petitioner will be at liberty to adopt any other remedy which she deems fit. We make it clear that we have not expressed any opinion on the merits of the case.

4. Petition is disposed of accordingly.

[SMT. RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]